HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 145 OF 2006

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANTS Chirounjilal and another

Versus

RESPONDENT State of Madhya Pradesh

JUDGMENT FOR CONSIDERATION

Sd/-
JUDGE
11/7/2007

HON'BLE SHRI L.C. BHADOO, J

Sd/-
L.C. Bhadoo
Judge

POST ON 13 JULY 2007

Sd/-
Dhirendra Mishra
Judge

(25)

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 145 OF 2006

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANTS

1. Chirounjilal,
aged 30 years,
S/o Shyamlal Sahu

2. Pooran Singh,
aged 25 years,
S/o Mehattarram Dhruv

All residents of Village Devpur, P.S. Arjuni, Tehsil & District Dhamtari (Madhya Pradesh)

Versus

RESPONDENT : State of Madhya Pradesh,
through Police Station Arjuni,
District Dhamtari (M.P.)

Present

Mr. A.K. Gupta, counsel for the accused/appellant.
Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

J U D G M E N T
(13 July 2007)

Per Dhirendra Mishra, J

The appellants have preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction and order of sentence dated 15th May 2000 passed by learned Additional Sessions Judge, Dhamtari in Sessions Trial No.447/99, whereby the learned Additional Sessions Judge, after holding the accused/appellants guilty for the offence under Section 302 or 302/34, 201 of the Indian Penal code, sentenced each of them to undergo imprisonment for life and imprisonment for five years, respectively.

2. Case of the prosecution in brief is that one Mahesh Sahu, S/o Guhti Sahu, aged about 32 years of village Devpur was missing since 2 ½ years before 23.7.1999 when Dehati Merg intimation of Ex.P/19 was recorded. A missing report dated 17.7.1999 of Ex.P/18-A was also recorded on the information of Meenabai, wife of Mahesh Sahu regarding missing of Mahesh Sahu. Further case of the prosecution is that Inspector Nastore Kujur of Police Station

Arjuni while investigating Crime No. 115/99 interrogated accused Rohit Kumar whereupon Rohit Kumar gave information that in the past they had buried Mahesh Sahu after murdering him. The enquiry was commenced and after collecting evidence Dehati Nalishi was registered on 23.7.1999 in village Devpur. On the basis of information given by accused Puran Singh and Chirounji, dead body of deceased and other connected articles were recovered and thereafter, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Dhamtari who in turn committed the case to the Court of Sessions Judge, Raipur and the same was received on transfer by the learned Additional Sessions Judge for trial.

3. Learned trial Court framed charges under Section 302, in the alternative 302/34 and Section 201 of the IPC. The accused/persons abjured their guilt. Prosecution in order to establish the charge against the accused/appellants examined 18 witnesses. Thereafter, statements of the accused persons were recorded in which they denied the circumstances appearing against them in the prosecution case and pleaded innocence and false implication.

4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellants as mentioned above. However, accused Goutam was acquitted of all the charges leveled against him.

5. Learned counsel for the accused/appellants argued that the prosecution has failed to prove that skeleton of bones allegedly recovered at the instance of the appellants was that of Mahesh Sahu. It has further been argued that the evidence regarding the fact that Mahesh died homicidal death and his identification on the basis of clothing and other articles is highly suspicious and doubtful. The whole sequence of events present in the prosecution case, appears to be highly improbable. The conduct of the witness namely Bhagwandas (PW-18) who claims himself to be the witness of extra judicial confession is unnatural and not reliable as he did not disclose the alleged confession to anyone for a period of 2 ½ years. Conviction of the appellants is based on erroneous appreciation of the evidence available on record.

6. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

7. We have heard learned counsel for the respective parties and perused the material available on record including the impugned judgment.

8. The question for consideration of this appeal is – whether learned trial Court was justified in reaching to the conclusion that the skeleton of bone recovered at the instance of accused persons was that of deceased Mahesh Sahu and he died homicidal death and that the prosecution has been able to establish involvement of the accused/appellants in crime in question by circumstantial evidence?

9. Meenabai (PW-1), widow of deceased Mahesh Sahu, has stated that some four years before from the date of her examination her husband had gone to Devpur fair alone from the home and since then he did not return. At that time he was wearing black coloured checked full shirt and white pant, Lakhani slippers and he was also carrying green coloured shawl, wrist watch and silver locket and a bracelet made of brass over his wrist. When she could not locate him on search, she lodged a missing in the last *Aashad.* She came to know in the last *Aashad* itself that the accused persons while quarreling with someone in the hotel had threatened that "they shall also burry them after murdering as they buried Mahesh after his murder". She heard about this as it had become talk of the village. The police had investigated and discovered the dead body. The dead body was identified by her brother-in-law (*Jeth*) on the basis of clothes. As disclosed by the accused persons she is stating that the accused persons murdered her husband and thereafter, buried him. She did not participate in the identification and no article was shown to her. Naib Tehsildar had called her in the Court where 4-5 shirts, 4-5 pants and 2-3 shawls were shown to her and she had identified the white pant, black coloured checked shirt and green shawl of her husband. On that place 7-8 silver lockets and watches were also shown to her and she had correctly identified the locket and wrist watch belonging to her husband. In the cross-examination she had admitted that at the time of incident she had

gone to Marathapara, Dhamtari, her maternal place, in connection with her delivery and her husband had gone to Devpur after leaving her some one month before. While he was living in Devpur, he had disappeared and it is correct that when he disappeared from Devpur, she is not aware as to what clothing he had put on. She has also admitted that after hearing the rumour in the hotel, she had lodged the report and went to Devpur only after recovery of dead body of her husband. His dead body was lying in the *Badi* (kitchen garden), she identified the dead body on the basis of clothing, slippers and watch. Her mother-in-law had also gone there and seen the dead body and identified the same on the basis of clothing. At the time of identification one police person was present who had asked her to see the clothes. It is true that she had seen the clothes before and therefore, she could recognize them. It is true that "Shri Ram" was inscribed on the locket of her husband whereas other lockets were plain. Her husband used to sell fruits and subsequently, he started vending liquor in village Devpur and thereafter, he was stopped selling liquor by the villagers and a quarrel had ensued in this regard. In paragraph 5 of her statement, Meenabai has stated that she went to lodge the report only after the accused persons boasted in the hotel. However, there is no mention of the accused persons in the missing report.

10. Missing report of Ex.P/18-A has been proved by the Head Constable Goverdhan Majhi (PW-9). He has stated that in the missing report the informant did not mention that the missing person was putting on wrist watch, shawl and *Tabij* (locket). It was also mentioned that he used to be out for one and half years in connection with earning livelihood and no explanation was given for delay in lodging the missing report.

11. PW-13 Nestor Kujur, S.H.O., P.S. Arjuni, has stated that accused Chirounji, Pooran, Indal and Rohit were arrested in connection with crime No. 115/99 and on interrogation Rohit stated that other co-accused persons were assaulting deceased Maran and he had stopped them, whereupon Chirounji, Pooran and Indal had threatened him that if he does not accompany them, they shall also kill him in the same manner as Mahesh Sahu. Khumanlal and Bhagwanram are also aware of this fact. Thereafter, memorandum of Ex.P/3 of Pooran was recorded on 23.7.1999. Appellant

Chirounjilal had also stated in his memorandum of Ex.P/4 that he shall get the dead body, pliers and wrist watch recovered. He sought permission from the S.D.M., Dhamtari and thereafter, he took the Executive Magistrate Shri Margiya, Dr. Mishra and Qadir to village Devpur and on being pointed out by accused Pooran and Chirounji, Panchnama (Ex.P/5) of the place where the dead body was buried, was prepared. The place was excavated and one dead body in the form of bones was recovered under Ex.P/6. Dead body was identified by Gendram and Kriparam on the basis of clothing etc. vide dead body identification memo of Ex.P/7.

12. Kriparam (PW-6), brother of the deceased, has stated that the police came to their village, interrogated Indal, Pooran, Chirounji and Rohit in connection with double murder case. They again returned 2nd or 3rd day, at that time the villagers had asked the accused persons upon which the accused persons had stated that they have buried the dead body of Mahesh in the field of Bhagwan Singh. Chirounji and Pooran had shown the place where the dead body was buried. The place was dug and only bones were recovered. However, the dead body was identified on the basis of clothing as he had seen deceased Mahesh wearing the same clothing when he was alive. Subsequently, after a month he was called for identification whereupon he went there along with his brother Gendram and wife of Mahesh and there they had correctly identified the shirt, pant and shawl of his brother vide memorandum of Ex.P/1. The identification was conducted by Tehsildar. In paragraph 8 of his cross-examination he has stated that he met his brother on the eve of Budapanni Mela. Budapanni is celebrated on the next day of Mela. On that day, his brother was wearing a black coloured trousers and red shirt, however, with the dead body white pant and black checked shirt were recovered.

13. Gendram has not been examined. Khumanram (PW-8) has stated that some 2 ½ years before while he was proceedings towards his field at about 5-6 p.m., he met Chirounjilal near pump house who told him that they have buried Mahesh after murdering him. However, the animals have dug the place and he called him to level it and took him towards the grass land where there was a pit. Both of them had leveled it. Chirounji had threatened him not to disclose this fact, therefore, he did not disclose it to anyone. PW-11 D.R.

Margiya, Naib Tehsildar has stated that the dead body was recovered in his presence after seeking permission from the S.D.M. Inquest report of Ex.P/14 was prepared by him, the Panchas present there had identified that the dead body was of deceased Mahesh Sahu. In the cross-examination he has stated that three accused persons took them to the place where the dead body was buried. They were independently interrogated about the place of burial. He does not know as to who gave information first as he does not recognize the accused persons by name. Initially, no bone was found when the first pit was dug, he did not notice any special identification of the clothing.

14. Rohit (PW-16) has not supported case of the prosecution and he has turned hostile. In the cross-examination he has denied his diary statement of Ex.P/25.

15. Birijbai (PW-14), mother of the deceased, has stated that three years before on the day of Budapanni her son wearing a white pant, black coloured checked shirt, shawl, a wrist watch and a locket in which "Jai Shree Ram" was inscribed, went out of home and did not return in the night. While he was going, he had asked her to keep the meal ready as he was hungry. He did not return on the next day. She went on his search at the place of fair as well as to the house of relatives. Earlier also her son had gone to Haryana and used to plan to go to Haryana for livelihood. Considering that he might have gone to Haryana, they did not lodge report. When the incident of Raman murder case took place, then they learnt that the accused persons had killed Mahesh and buried him. She had gone to Dhamtari Court in connection with investigation and there they had identified the locket and wrist watch. At the time of identification police personnel were also present. In the cross-examination she has admitted that she is illiterate, therefore, she is not able to read "Jai Shree Ram" inscribed on the locket, however, she identified it. She has denied that Mahesh was putting on red shirt and black pant when he left the house on the date of incident. In paragraph 7 she has admitted that a report was lodged against Mahesh regarding setting fire in the shop of Ganeshram. She has denied the suggestion that there was any quarrel between Mahesh and Bhagwanlal. However, she has admitted that Mahesh used to quarrel with his wife after consuming liquor.

16. Bhagwanlal Dewangan (PW-18) has stated that three years before Chirounji worked with him and Chirounji had told him that Mahesh had illicit relationship with the wife of his younger brother Goutam. This was told to him by Goutam and for this reason he intended to kill Mahesh. 25-30 days thereafter Chirounjilal told him that he had buried Mahesh after murdering him with the help of Pooran. After 3-4 days Chirounjilal told him that the animals had dug the place where the dead body was buried, therefore, he along with Khuman Sahu has again leveled it. He had also shown the place where the dead body was buried which is nearby Bhainsasur. This fact was narrated by him to the police. Since Chirounji had threatened him not to disclose this fact or else he will face the fate of Mahesh, he did not disclose the same to other out of fear. Subsequently, when the accused persons were arrested in Raman murder case, then he went to Police Station Arjuni and informed about the incident in writing.

17. Thus, from the statements of the above witnesses, it is evident that the missing report was lodged by the wife of Mahesh Sahu about 2 ½ years after from the date of alleged disappearance of the deceased. It is also alleged that at the time Mahesh disappeared, Meenabai (PW-1) was residing in her parental house in connection with her delivery and Mahesh went to fair from Devpur and she did not know as to what dress he was wearing on the day he disappeared. She has stated that she lodged the report only after she came to know in the village that accused persons were boasting in the hotel about the murder of Mahesh. However, this fact is missing in the missing report of Ex.P/18-A. Meenabai and Birijbai in their Court statements have given the minute details about the clothing Mahesh was wearing at the time of his disappearance including the make of the slippers, locket, wrist watch etc. though these details are missing in the missing report lodged on 17.7.1999. From the statements of other witnesses including the statement of S.H.O., Nestore Kujur, the fact that emerges is that while they were interrogating the accused/appellants and other two accused persons in connection with some other murder case they came to know about the involvement of the present appellants in the murder of Mahesh. Thereafter, on the basis of their memorandums the skeleton of bone was allegedly recovered. From the evidence

available on record, possibility of lodging the missing report only after recovery of the dead body cannot be ruled out. It is unconceivable that in the missing report lodged after 2 ½ years, the person lodging the report can give the details of clothing worn by the missing person at the time of disappearance. It is also unconceivable that the clothes buried for a period of more than 2 ½ years can be correctly identified on the basis of colour etc. that the same belonged to Mahesh, therefore, we are of the considered opinion that the identification of bony skeleton as Mahesh Sahu on the basis of clothing and other articles is highly improbable and doubtful. Moreover, his brother Kriparam (PW-6) has admitted in his cross-examination that he had met deceased on the day of Budapanni and on that day he was wearing a black coloured trousers and red shirt whereas the clothes recovered with the dead body were white pant, white trousers and black coloured shirt. From the evidence of Naib Tehsildar D.R. Margiya (PW-11) it is also observed that on the information given by all the three accused persons the place was first excavated, however, no dead body was found from there and the dead body was found only after second pit was dug. The other witnesses of memorandum have deliberately not revealed this fact in their depositions. The recovery of other articles namely locket, slippers and wrist watch is also of no help to the prosecution firstly on the ground that in the missing report the wife of deceased has not mentioned that her husband Mahesh was possessing these articles at the time of disappearance and secondly, all these articles are commonly found articles and in the absence of any specific mark regarding identity of the same, recovery of these articles at the instance of the appellants cannot conclusively establish their involvement in the offence in question. Meenabai, wife of the deceased and Birij Bai, mother of the deceased, have admitted in their cross-examination that these articles were shown to them by the police earlier, therefore, they could identify them. The memorandum of Ex. P/3 of Pooran Singh is alleged to be recorded in the presence of Panch witnesses Raman Sen and Pawan Sen in Police Station Arjuni on 23.7.1999, however, the attesting witness of this document has put the date of 23.10.1999 under his signature.

18. Learned Additional Sessions Judge has reached to the conclusion that the skeleton of bones recovered was in fact the dead body Mahesh Sahu and the identification is based on the clothing of the deceased. The involvement of the appellants has been held to be proved on the ground that dead body was recovered on the memorandum of the appellants and further reliance has been placed on the statements of PW-18 Bhagwandas and PW-8 Khuman Ram. From the evidence available on record it is clear that these witnesses have admitted that they kept quiet after they were told by Chirounjilal that he had buried Mahesh after murdering him. Khuman Ram has also stated that he had gone to the place where Mahesh was buried and has helped Chirounji in leveling that place. However, he did not disclose this for more than 2 ½ years out of fear as he was threatened by Chirounji. He has claimed that he informed the police on 20.7.1999, however, his statement was recorded only on 24.7.1999. The inordinate delay of 2 ½ years in informing the police by witness Bhagwandas makes his versions doubtful. Moreover, this witness was aware about the place where the dead body was buried, he was interrogated by the police even before memorandums of the appellants were recorded and thus, possibility that he must have disclosed about the place where the dead body was buried, cannot ruled out, therefore, the alleged discovery of the skeleton at the instance of appellants looses its significance.

19. On the basis of aforesaid analysis, we are of the considered opinion that inference of the trial Court that the skeleton allegedly recovered on the basis of information of the appellants, was in fact the dead body of Mahesh Sahu cannot be sustained. We have already held that identification on the basis of clothing is highly suspicious and doubtful. Moreover, the trial Court was not justified in reaching to the conclusion that the appellant Chirounji made extra judicial confession as inordinate delay in giving information by this witness Bhagwandas (PW-17), makes his version unreliable and doubtful. The prosecution has failed to connect the appellants with the crime in question through circumstantial evidence. For the foregoing reasons, judgment of the trial Court cannot be sustained and the appeal preferred by the accused/appellants deserves to be allowed.

20. In the result, the appeal succeeds. Conviction of the accused/appellants under Section 302, in the alternative 302/34 and Section 201 of the IPC and sentence imposed thereon, are set aside. The appellants are acquitted of the above charges. They be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge